

MARY NAN SPEAR

IBLA 84-15

Decided June 6, 1984

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application for oil and gas lease NM 57141 without refunding the filing fee.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Where the identification number on an automated simultaneous oil and gas lease application form Part B differs from that on Part A, the application is unacceptable, and appellant is entitled to a refund of her filing fees paid in excess of \$75 per application form as a result.

APPEARANCES: Mary Nan Spear, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On September 20, 1983, the New Mexico State Office, Bureau of Land Management (BLM), rejected Mary Nan Spear's simultaneous oil and gas lease application for parcel NM 113 which was drawn with first priority in the June 1983 drawing and was serialized as NM 57141. The application was rejected because the identification number of Part B on her application differed from that of Part A. Appellant does not contest the rejection of her application; rather, she asserts, that since her identification number was improperly entered in Part B, the application should have not been included in the drawing, and that the application and her check should have been returned unprocessed.

Presently, BLM uses a computerized application system allowing applicants to apply for hundreds of parcels on one application form. Previously, oil and gas lease applicants participating in the simultaneous filing system submitted one application for each parcel for which they wished to apply. One mistake in completing the application would only result in the loss of one filing fee. Now, however, applicants are required to submit a \$75 filing fee for each parcel, and the fee submitted with each form can often amount to several thousand dollars. Appellant's application bearing the incorrect identification number was accompanied by a filing fee of \$6,750 because appellant had applied for 90 parcels on one application.

[1] In Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), this Board found that a defect of the type committed by appellant causes her application to be found to be unacceptable. See Shaw, supra at 178-79, 91 I.D. at 136-37. Since the decision in Shaw, numerous Board decisions establish that, although the failure to exactly match the numbers on both parts of the automated application form is not a defect expressly listed in the regulation, the application must nonetheless be found unacceptable since the defect prevents use of the automated system. See 43 CFR 3112.3(a)(3); Newman Partnership, 79 IBLA 281 (1984); Joan Chorney, 79 IBLA 271 (1984). Shaw and its progeny are controlling in this case.

Since appellant's application is unacceptable, a fee of \$75 for each application form should have been deducted from the total amount of her remittance, and the balance returned to her. The distinction between finding that an application is unacceptable or rejectable is crucial in making this determination, for, as established by Shaw, it is only in the case of applications found to be unacceptable that a refund of the filing fee may be made, after deduction of a \$75 payment per application form. See 43 CFR 3112.3(b); Shaw, supra at 176, 91 I.D. at 135.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified and the case remanded to BLM for refund of appellant's filing fee as directed by this opinion.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

James L. Burski
Administrative Judge

